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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 4.3.2015

CORAM:

THE HONOURABLE Mr.JUSTICE V.S.RAVI

Crl.O.P. (MD) No.724 of 2013

and

M.P (MD) Nos.1 and 2 of 2013

M.Mohamed Abbas

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Usilampatti Taluk,
Madurai District.

2.The Sub-Inspector of Police,
Peraiyur Police Station,
Madurai District.

... Respondents

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records and quash the summon issued by the 1st respondent in Na.Ka.No.5803/2012/24 dated 13.8.2012.

For Petitioner : M/s.C.M.Arumugam

For Respondents : Mr.P.Kannithevan

Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed by the petitioner to quash the summon issued by the 1st respondent in Na.Ka.No.5803/2012/24 dated 13.8.2012.

2. The petitioner has submitted that the 1st respondent being a statutory authority is duty bound to discharge his official duty with strict compliance of legal procedure. But the proceedings initiated under Section 145 Cr.P.C, by the first respondent is totally against the ambit of the procedure as contemplated under Sub Section 1 of Section 145 Cr.P.C. The first respondent ought to have recorded his subjective satisfaction before issuing summon to the petitioner and no proceeding could be initiated without preliminary order recording his satisfaction and the summon issued by the first respondent is bad in law. In the circumstances, the petitioner has requested to quash the summon issued by the 1st respondent in Na.Ka.No.5803/2012/24 dated 13.8.2012.



3. The pertinent point that arises for consideration in this Criminal Original petition is as follows:

"Whether the petitioner is entitled to get an order to quash the summon issued by the 1st respondent in Na.Ka.No.5803/2012/34 dated 13.8.2012 for the reasons stated in the petition?"

4. Along with Criminal Original Petition, the petitioner has filed the impugned summon dated 13.8.2012 issued by the 1st respondent in Na.Ka.No.5803/2012/34. The petitioner has categorically stated that the learned Revenue Divisional Officer, Usilampatti Taluk, has not assessed the truth of the information and the need for taking action under Section 145 Cr.P.C for preservation of peace while issuing the impugned summon.

5. In this connection, it is useful to refer to the following citations:-

i). Somasundaram v. The Revenue Divisional Officer (2002 (1) CTC 72)

Code of Criminal Procedure, 1973, Sections 107, 111, 482 - First Information Report - Before proceeding under Section 111, it has to satisfy double test, namely notice must furnish all information which are laid against person and before issuing Notice under Section 107- Orders passed do not set forth substance of information recorded by Sub-Divisional Magistrate and nature of case petitioner has to meet before entering appearance - Sub-Divisional Magistrate has to satisfy himself about need to issue Show Cause Order and Order must disclose application of mind by Magistrate to facts placed before him - Magistrate must assess truth of information and need for taking action for preservation of peace.

ii). Mohan and others v. State by Inspector of Police, Pasupathypalayam P.S and another (2003) M.L.J.(Cri) 558)

"A careful perusal of the order passed by the Revenue Divisional Officer -cum-Sub-Divisional Magistrate, Karur dated 8.11.2002 made in M.C.No.5 of 2002 on the file of the second respondent would clearly indicate that the order is not in the correct format nor to the requirements of Sec. 111, Cr.P.C and therefore, since there is no compliance



of such mandatory requirements of law stipulated under Section 111, Cr.P.C the order becomes liable only to be set aside and the same is decided accordingly.

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iii). P.R.Senniappan v. Revenue Divisional Officer, Coimbatore (2005 M.L.J. (Cri) 108)

"3. The order is an one sentence order without conveying any fact or circumstance or without any discussion so as to arrive at the decision to issue an order of this sort and it is a mute order without conveying anything relevant, particularly, for consideration of the authority and application of mind and therefore could be branded only as a non-speaking order, which cannot be passed in law."

iv) Palani v. The Inspector of Police (2006 (3) CTC 792)"

"Code of Criminal Procedure, 1973, Sections 107 & 111 - Duty of Executive Magistrate - Substance of information received is not set forth in notice - Order must also reflect that Magistrate has assessed truth of information - and need for taking action for preservation of peace and order - Joint enquiry can be held only in respect of members or association of same group and not against members of rival group - Shortage of information to substantiate application of mind would render order as invalid."

v) Further in the unreported order of Madurai Bench of Madras High Court in the case of James Stephen and others vs. State, represented by Inspector of Police, Mukkoodal, Tirunelveli District in CrI.O.P.No.17632 of 2004 dated 28.6.2007, it has been clearly held as follows:

"5. ... Even in instance No.1, only the petitioners No.1 to 16 are said to have been involved in that instance. This reveals the non-application of mind of the learned Magistrate. On that ground, the proceedings are liable to be quashed."

6. In the present case also, it is found that the learned Revenue Divisional Officer, Usilampatti Taluk, Madurai District has not assessed the truth of the information and the need for taking action and the learned Revenue Divisional Officer, Usilampatti Taluk has not passed the impugned summon, in the absence of the said opinion prior to the compliance of mandatory requirements of law, so as to arrive at the decision to issue the said impugned summon. In the absence of the said opinion with regard to breach



of peace or to disturb tranquility, the learned Revenue Divisional Officer, Usilampatti Taluk ought not to have issued the impugned summon. Further, the Revenue Divisional Officer, Usilampatti Taluk has not passed the impugned summon, after subjective satisfaction. Further, it is seen from the impugned summon that the Revenue Divisional Officer, Usilampatti Taluk has not made assessment of material facts before issuing the impugned summon. Further on a careful scrutiny of the entire records, it is found that the impugned summon issued by the learned Revenue Divisional Officer, Usilampatti Taluk is liable to be quashed for the reasons stated in the present criminal original petition.

7. In the result, the Criminal Original petition is allowed and the impugned summon passed by the learned Revenue Divisional Officer, Usilampatti Taluk shall stand quashed. Connected M.P (MD) Nos.1 and 2 of 2013 are closed.

Sd/-

Assistant Registrar(Per Admn)

/True Copy/

Sub Assistant Registrar

To

1.The Revenue Divisional Officer,
Usilampatti Taluk, Madurai District.

2.The Sub-Inspector of Police,
Peraiyur Police Station, Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Vks

AA/18.03.2015/4p- 4c/

Predelivery order made
in
Cr1.O.P. (MD) No.724 of 2013
and
M.P (MD) Nos.1 and 2 of 2013

4.3.2015